DOR

302 NLRB No. 132

D--1964
Romulus, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRAFFIC TRANSPORT ENGINEERING, INC.

and

Case 7--CA--31290

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS,
SHOPMEN'S LOCAL NO. 508, AFL--CIO

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

Upon a charge filed by the Union, International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local No. 508, AFL--CIO, on December 7, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 15, 1991, against Traffic Transport Engineering, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1), and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 11, 1991, the General Counsel filed a Motion for Default Summary Judgment. On March 14, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that counsel for the General Counsel, by letter dated February 12, 1991, notified the Respondent that unless an answer was received by February 26, 1991, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, is engaged in the manufacture, construction, and distribution of vehicle trailers at its facility in Romulus, Michigan, from which it annually sold and shipped products, goods, and materials valued in excess of $50,000 directly to points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All production and maintenance employees of the Respondent engaged in the fabrication of iron, steel, metal, and other products, or in maintenance work in or about the Respondent's plant or plants located at Romulus, Michigan.

Since about 1968, and at all times material, the Union has been designated as the exclusive collective-bargaining representative of the employees in the appropriate unit, and since that date has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period of March 19, 1990, to March 20, 1992.

At all times since 1968, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the Respondent's unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

About October 30, 1990, the Respondent ceased operations of its business. About November 5, 1990, the Union requested bargaining over the effects of the Respondent's actions. Since about November 5, 1990, the Respondent has refused to bargain over the effects of its actions.

The effects of ceasing operations is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union a reasonable opportunity to negotiate and bargain as the exclusive representative of the Respondent's unit employees with respect to the effects of such acts and conduct. Since about November 5, 1990, the Respondent has refused to meet and

negotiate with the Union about the effects of its acts and conduct set forth above, although requested to do so by the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to bargain collectively with the Union over the effects of its decision to close its operations, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful refusal to bargain about the effects of its decision to close its Romulus, Michigan facility, we shall order it to bargain with the Union, on request, concerning the effects of its decision. We shall accompany the bargaining order with a limited backpay requirement designed to make whole the employees for losses sustained as a result of the violation, and to recreate in some practicable manner a situation in which the parties' bargaining positions are not entirely devoid of economic consequences for the Respondent. Therefore, we shall require the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). We shall order the Respondent to pay employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union concerning the effects on unit employees of its

decision to close its operations; (2) the parties reach a bona fide impasse in bargaining; (3) the Union fails to request bargaining within 5 days of this decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the Union subsequently fails to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount the affected employee would have earned as wages from the date on which the Respondent terminated its operations to the time he was recalled or secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all such sums shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

Finally, in view of the Respondent's closure of its operations, we shall provide for the mailing of notices to its employees.

ORDER

The National Labor Relations Board orders that the Respondent, Traffic Transport Engineering, Inc., Romulus, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local No. 508, AFL--CIO, about the effects of its decision to close its operations at its Romulus, Michigan facility on the employees in the following appropriate unit:

> All production and maintenance employees of the Respondent engaged in the fabrication of iron, steel, metal, and other products, or in maintenance

work in or about the Respondent's plant or plants located at Romulus, Michigan.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive representative of its employees in the above-described unit about the effects of its decision to close its operations, and pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the payments due under the terms of this Order.

(c) Mail a copy of the attached notice marked ''Appendix''[1] to the Union and to all unit employees who were employed at the Respondent's Romulus, Michigan facility. Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be mailed to the Union and to the employees by the Respondent immediately upon receipt.

---

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 6, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local No. 508, AFL--CIO, about the effects of our decision to close our operations in Romulus, Michigan, on our employees in the following appropriate unit:

> All production and maintenance employees of the Respondent engaged in the fabrication of iron, steel, metal, and other products, or in maintenance work in or about the Respondent's plant or plants located at Romulus, Michigan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union about the effect on the unit employees of our decision to close the Romulus, Michigan operation, and WE WILL pay unit employees limited backpay as required by the National Labor Relations Board.

TRAFFIC TRANSPORT
ENGINEERING, INC.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.